

REMARKS/ARGUMENTS

Claims 1, 2, 4-12, 14 and 15 are pending in the application, of which claims 6-11 are withdrawn.

Claims 1, 2, 4, 5, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) over Bertagnoli (US 5,480,442). Applicants have amended claim 1 to recite "a base plate connected with an end of the tubular section, the base plate having a first section extending outside the tubular section; and a top plate connected with the base plate and configured to engage a vertebral body end plate, wherein the top plate is tiltable relative to the first section of the base plate about an angle to the longitudinal axis of the tubular section; a plurality of openings in the outer wall of the tubular section; and wherein the base plate comprises a second section that extends in a direction away from the top plate and that engages with the tubular section." In contrast, Bertagnoli does not teach or suggest the noted limitations of claim 1.

Referring to FIG. 5a of Bertagnoli, the semi-spherical part 52 and the support plate 53 are rotatable relative to the support ring 51. However, the support ring 51 does not extend outside the tube 65. Accordingly, Bertagnoli fails to teach or suggest a base plate having a first section extending outside the tubular section, wherein the top plate is tiltable relative to the first section of the base plate. The semi-spherical part 52 and the support plate 53 extend outside the tube 65. The support plate 53 is fixed to the semi-spherical part 52 with the nut 56. However, the support plate 53 is not tiltable relative to the semi-spherical part 52. Accordingly, Bertagnoli fails to teach or suggest a top plate that is tiltable relative to the first section of the base plate about an angle to the longitudinal axis of the tubular section, and wherein the base plate comprises a second section that extends in a direction away from the top plate and that engages with the tubular section. Therefore, Applicants believe that claim 1 is patentable over Bertagnoli.

Applicants have amended claim 12 to recite "wherein the base plate includes a first section extending outside the tubular section; and a second element proximate to the second end


Appln No. 10/660,453
Amdt date October 14, 2008
Reply to Office action of April 14, 2008

of the tubular section wherein the second element has a base plate connected with the second end of the tubular section, a top plate connected with the base plate and configured to engage a vertebral body end plate, and an elastic member located between the top plate and the base plate, wherein the base plate includes a first section extending outside the tubular section; wherein the top plates are tiltable relative to the first section of the corresponding base plate about an angle to the longitudinal axis of the tubular section; wherein the tubular section defines a plurality of openings; and wherein each of the base plates comprises a second section that extends in a direction away from the corresponding top plate and that engages with the tubular section." For the reasons set forth above regarding patentability of claim 1 over Bertagnolli, Applicants believe that claim 12 is patentable over Bertagnolli.

For the foregoing reasons, Applicants believe that claims 1, 2, 4, 5, 12, 14 and 15 are patentable over Bertagnolli.

Applicants believe that claims 1, 2, 4, 5, 12, 14 and 15 are now in condition for allowance.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Mark Garscia
Reg. No. 31,953
626/795-9900

MEG/cks

CKS IRV1115060.1-*:10/14/08 3:57 PM